

1 April 1988  
OCA 88-1023

MEMORANDUM FOR THE RECORD

SUBJECT: Hearing on Diplomatic Immunity, H.R. 3036

1. On 30 March 1988, I attended a hearing held by the Subcommittee on International Operations, House Committee on Foreign Affairs, regarding a bill to limit diplomatic immunity for perpetrators of crimes (H.R. 3036). Testifying were Selwa Roosevelt, Chief of Protocol and John Condayan of the Department of State. Members attending were Representatives Smith, Snowe and Gilman. Attached are copies of Roosevelt's and Condayan's prepared statements.

2. Smith opened the hearing with his statement, noting that sweeping changes in diplomatic immunity could lead to problems, such as the altering of comparable laws abroad. Roosevelt then read her statement, making corrections in some figures. The total number of persons in the United States with criminal immunity is 26,282; the total number of those with acts immunity is 29,689, which adds up to 55,971. There has been no glaring increase in the number of crimes committed over the last decade. With regard to debts owed by diplomats, the problems are debts owed to American businesses or individuals by embassies or their personnel. Roosevelt feels strongly about taking care of this problem and included it in a report.

3. Smith admitted it would be difficult to implement some of the provisions of the bill, such as requiring personal insurance. In this country, one can only cover oneself for negligent acts through a homeowner's policy. He then asked for an example of abuses by Americans in the host countries. Mike McQuade, also appearing on behalf of the Department of State, said that Americans abroad are usually law-abiding. There are some problems with children and people who drink too much, though. Other countries afford great respect to diplomatic immunity, even if they are otherwise hostile.

4. Smith asked what is the type of crime committed most frequently. Roosevelt answered, shoplifting. Smith noted that there is no definition of a serious crime in the bill, which will be corrected. Roosevelt continued to say that there have been 24 assaults committed in six years, and 53 shoplifters caught. These cases involve defendants rather than diplomats as a rule.

5. Smith asked if the amount of diplomatic crime or diplomatic civil problem is out of line with that of other countries. Roosevelt answered that it is different in every country; she does not have statistics. Condayan said that last year, there were 19 cases of driving under the influence, resulting in 19 suspensions of licenses. This figure is probably not out of line. McQuade said that to find comparable statistics, one must look at a major capital city, such as London, Paris or Tokyo. Roosevelt said the figures were more or less the same in London and McQuade agreed. He said there are the same sorts of numbers and offenses found in London.

6. Smith wanted to know whether most of the drivers in auto accidents are covered by insurance. Condayan said yes. Smith said that apparently the largest single civil problem is that of bad debts. He asked if this is a significant problem. Roosevelt said that the debts are generally paid, but there were some patterns of irresponsibility. Smith asked if diplomatic immunity extends to bad debts. Roosevelt said yes. Smith then asked if immunity should extend this far. Joan Donoghue, an attorney with the Department of State, said that diplomats enjoy comprehensive immunity. Their staffs can be sued, however, for bad debts. Smith asked if the State Department looks to the foreign country for reimbursement. Roosevelt said she goes to the ambassador when a case is brought to her attention. These are often landlord-tenant disputes, and sometimes the diplomat/tenant is right. Sometimes going to the ambassador helps, but sometimes it does not. Roosevelt wants to refuse to accept diplomats from countries with this problem; she has tried to use this as the ultimate threat. It is uncertain whether this "threat" will be successful in tempering the problem.

7. Snowe asked how many persons who committed serious crimes are still in the United States. Roosevelt replied, none. They leave the country as soon as the crimes are discovered. The State Department normally asks for a waiver of immunity in court, which is usually not granted. The perpetrator is then expelled. Snowe asked if the United States ever grants a waiver of immunity. Roosevelt said rarely. Donoguhe said that the United States allows diplomats to waive immunity to testify. It depends on the country and the circumstances of the case as to whether they would get a fair trial.

8. Snowe asked if the United States has ever prosecuted a foreign diplomat. Donoghue said yes, although this is very rare. There was a case in which a diplomat's son's immunity ran out; he was covered as a member of his father's household and was thought to be a full-time student, but was not. The latter fact weighed against immunity. This was a case of speeding and then seeking to elude the police.

9. Snowe asked if a person must be assigned to a mission or embassy to have diplomatic immunity. McQuade said no. Strictly speaking, such immunity is accorded only at missions or embassies. Practically, however, the same degree of immunity is granted with regard to international organizations such as the United Nations, United Nations Secretariat and missions to the United Nations. People with immunity are mainly found in New York and the District of Columbia.

10. Snowe asked if there was a case in which a Saudi prince was alleged to hold his household staff in slavery and immunity was granted retroactively. A member of Roosevelt's staff said yes, although a harder line is now taken in such cases. That case was exceptional.

11. There then took place a long exchange between Snowe and the State Department representatives regarding the cancellation of visas and a 30-day continuance policy found in a State Department report. Roosevelt asked to take the question back and supply an answer to it at a later date.

12. The hearing recessed for a vote after Gilman asked why the State Department was objecting to a section 5(c) exclusion if it admits the visa revocation system does fail. He did not receive an answer to the question before the recess.

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#### Attachments

OCA/LEG [Redacted Box] (1 April 1988)

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